

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ZENIMAX MEDIA INC. and
ID SOFTWARE LLC,

Plaintiffs,

V.

OCULUS VR, LLC,
PALMER LUCKEY,
and FACEBOOK, INC.

Defendants.

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CIVIL CASE NO. 3:14-cv-01849-P

**PLAINTIFFS' MOTION FOR LEAVE TO FILE A SUR-REPLY IN FURTHER
OPPOSITION TO DEFENDANTS' MOTION FOR PROTECTIVE ORDER AND A
SUPPORTING APPENDIX, AND BRIEF IN SUPPORT**

Plaintiffs ZeniMax Media, Inc. and id Software LLC (collectively, “ZeniMax”) respectfully request that this Court grant them leave to file a Sur-Reply in Further Opposition to Defendants’ Motion for Protective Order as well as a short supporting Appendix. Plaintiffs’ proposed Sur-Reply is attached hereto as Exhibit 1. Plaintiffs’ proposed Appendix is attached hereto as Exhibit 2.

In their recently-filed Reply (Dkt. No. 253), Defendants made a number of misleading statements and failed to present significant, material facts. ZeniMax respectfully requests leave to file a short, four page Sur-Reply to address these deficiencies and ensure that the Court has a full and complete record when it considers the issues.

As described in Plaintiffs’ proposed Sur-Reply, Defendants claim that Plaintiffs have served additional deposition notices without seeking available dates (*id.* at 2), but Defendants fail to mention that—*in the very same correspondence*—Plaintiffs expressly stated that the noticed

dates were merely placeholders and Plaintiffs requested either confirmation of the noticed dates or alternative dates.

Similarly, Defendants rely on their claims that they offered deposition dates for numerous witnesses (*id.*) when, in fact, they did not offer any of those deposition dates until *after* Defendants filed their motion for a protective order and *after* this Court entered an Order encouraging the parties to confer regarding deposition dates.

Plaintiffs' proposed Sur-Reply provides the material facts conspicuously missing from Defendants' reply. Further, unlike Defendants' reply, Plaintiffs' proposed Sur-Reply puts all of the relevant facts in complete context. Accordingly, in order to ensure that the Court can fully consider those facts, Plaintiffs respectfully request leave to file a brief Sur-Reply.

Dated: November 16, 2015

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Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I hereby certify that on November 15, 2015, I attempted to confer with counsel for Defendants in this matter regarding the issues raised by this Motion to determine whether Defendants oppose the relief sought or not. Defendants did respond before this Motion was filed. Accordingly, pursuant to LR 7.1(b)(3), Plaintiffs presume that Defendants oppose the relief sought in this Motion.

This Motion was filed in an effort to ensure that the Court had a full record when considering the issues raised in the underlying motion for a protective order. As such, further delay awaiting Defendants' answer to the question of whether they oppose the relief sought in this Motion was not feasible because the Court could rule on the motion at any time.

Dated: November 16, 2015

s/ Kurt Wm. Hemr
Kurt Wm. Hemr

CERTIFICATE OF SERVICE

On November 16, 2015, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case files system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

Dated: November 16, 2015

s/ Phillip B. Philbin
Phillip B. Philbin